

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FREDDIE FRANCIS, JR.,	:	CIVIL NO. 3:14-cv-1248
	:	
Plaintiff	:	
	:	(Judge Munley)
v.	:	
	:	
B. FULLER, <i>et al.</i>,	:	
	:	
Defendants	:	

.....

ORDER

AND NOW, to wit, this 8th day of August 2017, upon consideration of Defendants' motion (Doc. 17) to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6), and motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, and for the reasons set forth in the Court's Memorandum of this date, it is hereby ORDERED as follows:

1. The motion (Doc. 17) to dismiss Plaintiff's official capacity claims pursuant to Federal Rule of Civil Procedure 12(b)(1) is GRANTED. The official capacity claims are dismissed in their entirety.
2. The motion (Doc. 17) to dismiss Plaintiff's claims against Defendant Ebbert pursuant to Federal Rule of Civil Procedure 12(b)(6) is GRANTED. The claims against Defendant Ebbert are dismissed in their entirety. The Clerk of Court is directed to NOTE on the docket that Defendant Ebbert is terminated as a defendant.
3. The motion (Doc. 17) for summary judgment pursuant to Federal Rule of Civil Procedure 56 is granted in part and denied in part.

- a. The motion for summary judgment is GRANTED with respect to the Eighth Amendment denial of adequate medical care claim against Defendants Carey, DiMicco, Potope, Buschman, Heigel, Santos, Waldman, Sholder, Dewald, and Parkyn. The Clerk of Court is directed to NOTE on the docket that these defendants are terminated. Entry of judgment in their favor is DEFERRED pending the final disposition of this matter.
 - b. The motion for summary judgment is DENIED with respect to qualified immunity and the Eighth Amendment use of excessive force claim against Defendants Fuller, Kubicki and Hayden. The excessive force claim will proceed to trial at the convenience of the Court.
4. The parties are directed to NOTIFY the Court within fifteen (15) days of the date of this Order of their willingness to consent to the jurisdiction of a United States Magistrate Judge for the purpose of the trial and final disposition of this matter. 28 U.S.C. § 636.
5. The Clerk of Court shall FORWARD to all parties the Court's "Notice, Consent, and Reference of a Civil Action to a Magistrate Judge" form.
6. In the event that there is a willingness to consent to the jurisdiction of a magistrate judge, the parties may execute and file with the Court the "Notice, Consent, and Reference of a Civil Action to a Magistrate Judge" form in lieu of the notification requirement set forth in paragraph 4.

BY THE COURT:

s/James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court

Dated: August 8, 2017

UNITED STATES DISTRICT COURT

for the
Middle District of Pennsylvania

FREDDIE FRANCIS, JR.

Plaintiff

v.

B. FULLER, et al.

Defendant

Civil Action No. 3:14-CV-1248

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Parties' printed names

Signatures of parties or attorneys

Dates

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date: _____

District Judge's signature

Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.